

the contours in Havens' maps are based on the service contour adopted by the Commission for purposes of determining the co-channel protection to which site-based incumbents would be entitled from geographic licensees. Prior to the implementation of geographic licensing, the Commission's AMTS rules did not specify a service contour, and applicants were permitted to file applications, and demonstrate that the coverage requirement would be met on the reasonable service contour of their choice. We reject Havens' suggestion that site-based licenses that were granted on the basis of predicted service contours demonstrating adequate coverage should be retroactively be terminated based on the Commission's subsequent adoption (for a different purpose) of smaller service contour,"

Mobex Network Services, LLC, 22 FCC Rcd 665, 669 (WTB 2007). Accordingly, the Commission should dismiss or deny Haven's Petition insofar as it attempts to raise an argument concerning continuity of coverage again.

In a rabid opposition to MCLM's Request for Extension of Time to file the instant Opposition, Havens blustered that the fact that MCLM does not possess certain old documents was "simply an admission of conspiracy between MCLM and Mobex to launder defective FCC license [sic] stations and the license," FCC File No. 0004738157, filed July 22, 2011. Satisfied with the Mobex transaction, MCLM had no need for detailed construction records of facilities first authorized a decade earlier and did not demand them from Mobex. As demonstrated by the declaration of David Predmore attached hereto as Exhibit 1, Mobex wound up its affairs and ceased paying National Capital storage company the rent on stored records, including copies of site leases, equipment inventory, and other old information, which was all destroyed years ago by the storage company. Although Havens' claims concerning the initial construction of the facilities of station WRV374 are bound by res judicata or by time, MCLM provides, *infra*, the limited information that it has been able to find or obtain.

Exhibit 2 is a spreadsheet compilation which MCLM obtained from Mobex of detailed information concerning the sites of station WRV374, as well as other sites. Exhibit 3 is a collection of leases for 26 of the WRV374 sites which were entered into by former holders of the license for station WRV374. Exhibit 4 includes records of lease payments made by Mobex with respect to WRV374 sites between 2001 and 2005. Exhibit 5 consists of construction documents from 2000-2001 for the WRV374 sites at Verona, New Jersey; Jacksonville, Florida; and West Palm Beach, Florida.

Exhibit 6 is a document dated August 2, 2004, prepared for Federal income tax purposes by Deloitte and Touche, LLP which allocates among the several States the value of the inventories, equipment and machinery, net rentals, and property of Mobex. For the purpose it was prepared, the Deloitte document does not apportion among call signs or sites, however, the document demonstrates that Mobex owned substantial property and bore substantial costs of operation during 2003.

The documents at Exhibit 7 are site leases entered into by MCLM which demonstrate MCLM's continued intention to serve the market and/or operate the facilities authorized under the license for WRV374.

Havens' Study Was Useless

Because the Commission has already disposed of Havens' claims concerning completion of construction and continuity of coverage, MCLM needs to say little about

Havens' Exhibit 1, which was a wholly fanciful effort to determine the coverage of the WRV374 sites. Not only was Havens' Exhibit 1 immaterial to any valid issue, it was prepared on the basis of parameters which were different from those used when the application for the initial license for station WRV374 was filed for and granted in 1996. Havens used an arbitrary, hypothetical transmitter output power; an arbitrary antenna gain; an arbitrary insertion loss for combiner, duplexer, or other components; and in some instances, an arbitrary derating of the antenna height. Havens neglected to note that the Commission determined nearly ten years ago that

our own engineering analysis of incumbent systems that were designed on the basis of a larger service contour, such as 17 dBu, demonstrates that the system's continuity of service will not be severed (i.e., that it will not be possible for a geographic licensee to interpose a facility between co-system incumbent stations) if the incumbent is protected to a 38 dBu service contour,

Amendment of the Commission's Rules Concerning Maritime Communications; Petition for Rule Making filed by Regionet Wireless License, LLC, 17 FCC Rcd 6685, 6700 (2002). No matter what Havens' study showed, it would have been irrelevant and proved nothing.

Attached hereto as Exhibit 8 is MCLM's study which depicts the service contours of station WRV374 utilizing as-built parameters. The study demonstrates each site's as-built contours at 17 dBu and at 38 dBu.

Havens' Allegations of Fraud are Extremely Irresponsible

Havens' use of Google Earth to claim that certain facilities of station WRV374 were never constructed, or are not constructed in the present day, and his resulting claims of fraud

are highly irresponsible. By his Exhibits 3 and 10, Havens sought to inflate trivial differences between sets of geographic coordinates into claims of fraud. These differences do not support Havens' claim that certain stations "are not located on any structure," Petition at 33. The Commission's records show that the license for station WRV374 was initially granted in 1996. How the geographic coordinates of the sites was initially determined by the various site owners at that time is not known to MCLM. MCLM suspects that Regionet, the initial licensee, may have used coordinates provided by the site owners or used the Global Positioning System (GPS). If site owner-supplied coordinates were used, they would have been based on NAD27, the standard in use by the Commission at that time. The Commission may take administrative notice that Selective Availability of accurate GPS coordinates was imposed until May 2, 2000, in the interest of national security. Until Selective Availability was lifted, civilians had access to less accurate GPS location information than the military; in many cases the random error was in the hundreds of feet.

Even if the site owners' or GPS geographic coordinate information had been precisely correct in 1996, the Commission at that time required the use of the North American Datum of 1927 (NAD 27) as the basis for geographic coordinates. The Commission did not even propose to require the use of NAD83 coordinates for licensing until 1998, Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, 13 FCC Rcd 9672 (1998); and did not require the use of NAD83 for tower registration until 1999, Commission Announces New Procedures for

Antenna Structure Registration, 14 FCC Rcd 9668 (1999). Had the initial applications been filed today, they would have been required to be filed using NAD83 coordinates, but, in 1996, the applications could not have used a datum other than NAD27. Havens' screen prints from Google Earth do not indicate whether the datum used was NAD27, NAD83, NAD88, World Geodetic System 84, or some other definition of the shape of the Earth and do not indicate the map projection used. The Commission can take administrative notice that there are sometimes substantial differences of coordinate locations depending on the geographic datum used. Moreover, Havens provided no information concerning the accuracy of Google Earth coordinates. Absent information concerning the data used and the accuracy of Google's coordinates, Havens Google pictures are not worthy of consideration.

Havens' attempt to elevate a minor and entirely understandable discrepancy in geographic coordinates between the resources available in 1996 and 2011 into a claim of fraud on the Commission was absurd to the point of frivolity and yet another abuse of the Commission's processes. Havens did not point to any requirement in the Commission's Rules for MCLM to file an application for modification of its licensed coordinates when there has been no change in the site's location. Further, Havens failed to show that the discrepancies which he alleged had caused any interference to himself or to any other authorized spectrum user.

At his Exhibit 4, Havens provided a copy of a UCC Financing Statement filed by Mobex. The document shows that some sites used Tait MPT-1327 equipment, some sites used

Motorola PassPort equipment, some used equipment obtained from Waterway Communications System, and some used equipment identified as “License Holder”. The expression “license holder” was used within Mobex as synonymous with “a non-revenue generating” site: this was a site that fully met FCC buildout requirements but had no current commercial customers. The site was a money-losing site, but was needed to protect the license contours until revenue could be realized at that site, or nearby fill-in sites, in the market. At the time that MCLM acquired Mobex’s licenses and other assets, when the spreadsheet at Exhibit 2 was prepared, equipment was used at each site which complied with the Commission’s rules. There is no Commission rule requiring each site to make money or to have paying customers; the marketplace dictates levels of demand and carriers determine where best to allocate their resources to boost sales and marketing efforts.

Havens Has No Basis for His Demands in the Commission’s Rules

Havens demanded that the Commission determine that the license for some of the sites of station WRV374 be terminated because Havens alleges that MCLM has permanently discontinued operations. Havens’ argument was flawed for a variety of reasons. As MCLM has consistently pointed out and the Commission recognizes, but Havens seems not to understand, there is no Commission rule which defines when an AMTS licensee has permanently discontinued operation of a station. Rule Section 1.955(a)(3) provides that

authorizations automatically terminate, without specific Commission action, if service is permanently discontinued. The Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section. A licensee who discontinues operations shall notify the Commission of the discontinuance of operations by submitting FCC Form 601 or 605 requesting license cancellation,

47 C.F.R. §1.955(a)(3). MCLM never sent a notice to the Commission for the discontinuance of operations via FCC Form 601 or 605, and never requested their cancellation for the license. MCLM has never permanently discontinued operation. One will search MCLM's licenses and Part 80 of the Commission's Rules, which governs AMTS, in vain for any condition or rule which governs the definition of permanent discontinuance for purposes of Rule Section 1.955. That the Commission has no rule which governs the definition of permanent discontinuance for purposes of Part 80 is demonstrated by the Commission's notice of proposed rulemaking in the matter of Review of the Commission's Part 95 Personal Radio Services Rules; 1998 Biennial Regulatory Review -- 47 C.F.R. Part 90 -- Private Land Mobile Radio Services; Petition for Rulemaking of Garmin International, Inc.; Petition for Rulemaking of Omnitronics, L.L.C., 25 FCC Rcd 7651 (2010). If the Commission had a rule, there would be no need for the Commission to propose one. MCLM has not permanently discontinued operation of any of the sites of station WRV374.

Permanent discontinuance of an authorized facility can reasonably be determined only by the licensee's intent. For the Commission to determine whether a licensee has permanently discontinued operation requires knowledge of the licensee's intent. Directly on point is the decision of the Court of Appeals in Birt v. Surface Trans. Bd., et al., 90 F.3d 580 (D.C. Cir. 1996) (Birt). Birt desired the court to determine that the Union Pacific Railroad had abandoned a section of track and that rights to the land should revert to Birt. The court held for the railroad, declaring that

a determination as to whether there is an "abandonment" should involve a more searching and functional inquiry about the actual intent of the parties to the transaction

than the bare formalities addressed by the Commission here. As stated by the Eighth Circuit Court of Appeals, abandonment is characterized by an intention of the carrier to cease permanently or indefinitely all transportation service on the relevant line.... It is the "intent" of the railroad--as evidenced by a spectrum of facts varying as appropriate from case to case--that should be the pivotal issue,

id. at 585, citing Black v. ICC, 762 F.2d 106, 113 & n.15, 246 U.S. App. D.C. 12 (D.C. Cir. 1985).

MCLM has not formed an intent to permanently discontinue operation of any site of station WRV374. MCLM acknowledges that it did not always pay rent for some of its tower sites. However, failure to pay rent is not the same as abandoning a license. This can easily be explained by the fact that MCLM has actively re-purposed the spectrum from maritime-only usage to efficient, modern technologies, as described below, many of which require more cellular-like architectures (several fill-in sites rather than one high site in a market). For example, where MCLM's Mid-Atlantic auction license overlaps WRV374, it would be wasteful and not in the public interest to pay site rent and utilities for duplicative sites. MCLM leases spectrum in Virginia to electric utilities and these customers choose their own sites, some within the footprint of WRV374 and some within the geographic area of station WQGF315. It would be wasteful to keep a WRV374 site in operation and obstruct the use of the spectrum by a utility at a nearby site, just to be able to say that the WRV374 site had not been discontinued. If, as a result of its current rule making proceeding, the Commission adopts a rule which defines permanent discontinuance of an AMTS station, then MCLM will

provide facilities at the overlapped sites if necessary to retain both the incumbent site and the authorization to use the site under the license for station WQGF315.

The important point is that, far from abandoning those locations which overlap with its Mid-Atlantic geographic area license, MCLM has sought to incorporate them into the larger footprint of the auction territory. MCLM has not filed an application to delete those sites within its auction contour, primarily because of the ongoing challenge to MCLM's status as the auction winner for the area. Consider the situation of the New Jersey Turnpike Authority (NJTA), which heavily uses MCLM's spectrum in the areas of both MCLM's auction license and the incumbent sites of station WRV374, namely, southern New Jersey around Philadelphia and just north of the Delaware Memorial Bridge. It would be poor spectrum policy to require MCLM to maintain WRV374 sites such as Winterthur, Delaware, where the entire surrounding area is already served by the NJTA from its preferred sites. Please see the coverage map of the NJTA system using MCLM's auction and incumbent spectrum. The spectrum is heavily used and good public policy would not require MCLM to withhold some spectrum from NJTA merely to keep a site in operation at Winterthur.

MCLM Has Not Permanently Deconstructed in Florida

At Havens' Exhibit 8, Havens provided information concerning facilities operated under a management agreement (not under a lease) with Central Communications Network, Inc. (CCN) in the State of Florida. Havens not only failed to interpret those facts correctly, he

also jumped to an incorrect conclusion concerning an e-mail message from Jim Sansavera of CCN to David Ayers of the telecommunications firm, Access Spectrum, LLC.

Fourteen PassPort sites were constructed under the management arrangement between MCLM and CCN. The system was operated for several years before CCN ran out of money and stopped paying MCLM for the use of the spectrum. (CCN may have oversold the PassPort radios to customers because, as it happened, the radios did not live up to customer expectations for portable coverage performance.) After several efforts to retrieve the payments, and while the system remained in operation by CCN, MCLM determined to file in court against CCN for nearly \$900,000 in payments due. MCLM was awarded a default judgment against CCN for the entire amount due in October 2009. MCLM attempted to collect this judgment and restore service, but Motorola and Lease Corporation of America hold liens on the hard assets located at the sites and the radios in inventory. MCLM understands that CCN may have turned off the equipment at some or all of the 14 sites, and MCLM very much desires to retrieve the equipment used by CCN and return the stations to operation, and is earnestly attempting to do so. As one would expect, MCLM has hired a collection company to pursue a financial settlement which could include recovery of the equipment at the sites or payment to MCLM of the judgment owed so that MCLM could carry out its intention to resume service. Havens is not a real-world operator, so he would not know that sometimes in business you try things and fail: PassPort failed in central Florida; it did not attract sufficient customer demand to warrant CCN's keeping it in service. In addition, MCLM believes that CCN's salesforce failed to price the monthly service appropriately. What is clear is that the

Commission does not expect, nor could it expect, licensees to be commercially successful in every deployment. Here, MCLM's attempt to work with CCN was not commercially successful over the long term. But the fact that MCLM spent thousands of dollars to sue, won a summary judgment, and now moved to enforce that judgment, shows it never has abandoned Tampa, St. Petersburg, Clearwater, Orlando, or the other areas of central Florida covered by this system.

Mobex timely built an LTR system at its Florida sites, including Clearwater. Havens misread the Sansavera message as suggesting that nothing was constructed at Clearwater. At the time that Sansavera wrote to Ayers (neither one a Mobex employee), Mobex had LTR facilities constructed in Clearwater; the question alluded to in the e-mail message was whether CCN was going to replace that LTR site with a "220" PassPort site, or whether Mobex would leave it as LTR and expand with fill-in sites of PassPort around the site. The decision was made to leave Clearwater as LTR and to build PassPort at other sites around it in the Tampa Bay market.

Havens' was incorrect in claiming that MCLM's Miami site has been abandoned. To the contrary, MCLM in early 2011 signed a new lease for the Datan 2 Building and has been working with the site owner. A copy of that lease is attached as Exhibit 9 hereto. The lease predates the filing of the above-captioned application and shows no intention to discontinue service permanently.

The technician hired to prepare Havens' Exhibit 10, Part 1 stated that he heard a station operating in the Miami area on frequency 217.926 MHz, which is in the frequency band authorized for station WRV374, and "assumed [it] to be from [an] MCLM transmitter." Havens' technician admitted that he did not have the equipment necessary to find a station location and he stated that he did not find the source of the signal. MCLM does hold a lease for the Datran 2 Building where the station is authorized and also has Critical RF, Inc. (CRF) radio users in the Miami market operating at or near that site on MCLM channels. As discussed in more detail herein, MCLM has often used the spectrum authorized under its license for Miami and West Palm Beach to demonstrate the equipment and software of CRF. Since 2010, MCLM has been exploring a transportation communications solution with TriRail (Miami to West Palm Beach) for PTC use in the area as well as a PTC system in the Orlando area.

New Jersey, Allentown, Philadelphia, Delaware and New York City Spectrum is in Operation

Within its authorized coverage areas in New Jersey, MCLM has leased 32 of its 40 channels to Pinnacle Wireless, Inc. (Pinnacle). Pinnacle, in turn has deployed 20 of the channels for a Motorola PassPort system used by public authorities on the New Jersey Turnpike and the Garden State Parkway, together with the NJTA system. This important system helps tens of millions of travelers each year obtain communication to avoid road hazards, such as ice; to get emergency response in case of accidents; and to move safely throughout the interstate system which is one of the busiest in the world. Please see at Exhibit 9 a map of the system in place today throughout New Jersey on MCLM's spectrum.

In addition, Pinnacle has deployed 12 of the MCLM channels in Northern New Jersey for the Meadowlands Complex, a series of NHL and NFL stadiums, a mall, and other event locations visited by over one million persons annually. This radio system provides security communications and logistics to these important venues. On any given Sunday in autumn, nearly 100,000 fans pack Giants Stadium and its environs to see a Giants or Jets game.

Havens' reckless claim that MCLM's nearby Verona, New Jersey site was somehow terminated ignores the fact that Pinnacle until 2010 managed the site for MCLM and MCLM paid Pinnacle in 2010 for an extension of rights to use the authorized Verona location as needed into the future. MCLM has been negotiating with the new site manager for an extension of its rights to use this site when the current rights expire. With channels in use all around the site for important public interest purposes, it would be foolish for MCLM to withdraw a channel from, for example, the New Jersey Transit Authority and modify its license to specify a different site merely to please Havens.

In his Comments, Havens noted that MCLM has offered much of the WRV374 spectrum to the National Railroad Passenger Corporation (Amtrak). Havens claimed to have a copy of MCLM's proposal to Amtrak. In an e-mail message to the Commission on July 22, 2011, Havens claimed that he obtained MCLM's proposal to Amtrak from a public MCLM website. MCLM does not have a public website. Using a URL which no one outside of MCLM should be able to associate with MCLM, MCLM does transfer information from one of its offices to another by file transfer protocol so that large files can be transmitted without

the size limitations of e-mail. The only reasonable conclusion is that Havens must have been given knowledge of the site by Steve Calabrese, a disgruntled former employee of CRF, and took it on himself to spy on and disclose MCLM's private business. *MCLM asks the Commission to investigate whether Havens, a direct competitor, has violated telecommunications laws and/or anti-trust laws by his unauthorized access of and intrusion into MCLM's commercially-sensitive computer systems and obtaining its proprietary customer proposals and spectrum pricing information.*

The very fact of MCLM's offer to Amtrak shows MCLM never formed the requisite intent to discontinue permanently the operation of station WRV374. It should be obvious, even to Havens, that had MCLM intended to discontinue operation permanently and request modification of its license to delete sites, MCLM could not and would not have made an offer to Amtrak. Amtrak's Northeast Corridor is covered by both MCLM's auction license WQGF315 and its incumbent license WRV374 from Union Station in Washington through Philadelphia up to midway through New Jersey. From there, the trackage overlaps with the NJTA system in place on MCLM's license for WRV374 all the way to New York City. After that, it is covered by MCLM's WRV374 license for World Trade Center (currently operational at Times Square); Valhalla, New York (Westchester County); Selden, New York; Hamden, Connecticut; Rehobeth, Massachusetts; and up to South Station in Boston (an authorized fill-in site). At no point along this 500 miles of track has MCLM permanently abandoned a site. These sites are valid and ready for Amtrak, if Havens would only get out of the way of the oncoming train.

Other Sites

MCLM is in operation at its sites at Savannah, Georgia; Selden, New York, Valhalla, New York; Hamden, Connecticut; and Rehobeth, Massachusetts (and a fill-in site at Boston).

In North and South Carolina, MCLM in December 2010 entered into a spectrum Asset Purchase Agreement with Progress Energy. Under that agreement, MCLM would have cancelled its license for the sites at Myrtle Beach (Conway) and Navassa (New Bern) at the time of closing. However, because of the purchase of Progress Energy by Duke Energy announced in early 2011, there was a change in the new owner's direction and Progress Energy cancelled the agreement and MCLM withdrew the assignment application.¹

Havens' allegation that his Exhibit 2 proved that Regionet Wireless License, LLC did not construct a station at Philadelphia was absurd. MCLM does not know why a sister company to Regionet entered into the tower lease, nor does that fact prove anything material. Regionet Wireless License, LLC and Regionet Wireless Operations, LLC were both purchased by Mobex and Mobex combined the operations activities with the licensing activities. MCLM acquired an operating facility from Mobex at Philadelphia. Because the Philadelphia

¹ Conway and New Bern are among 8 sites which are of no real consequence in the instant matter. Along with the WRV374 sites at Philadelphia; Winterthur, Delaware; Navassa, North Carolina; Suffolk and Richmond, Virginia; and Baltimore, Maryland, the Conway and New Bern sites are overlain by MCLM's geographic area license for station WQGF315. Although MCLM could modify its license for station WRV374 to delete those sites as duplicative, MCLM will not do so for reasons explained, *supra*.

site is covered by MCLM's license for station WQGF315, Havens had nothing to gain by complaining about Philadelphia.

Havens relied at his Exhibit 6 on a declaration of Stephen J. Calabrese for information concerning MCLM construction and for certain of his assertions. At his cover page of Exhibit 6 (also labeled Exhibit B) Havens stated that the declaration speaks for itself. No, the Calabrese declaration does not speak for itself. At his page 24, Havens incorporated the Calabrese declaration into his Petition which means that Havens, himself, declared the truth of the matters therein under penalty of perjury. Havens cannot escape liability for perjury because he admitted in his own declaration at page 52 of his Petition that the Calabrese declaration was (as MCLM had suspected) "prepared pursuant to [his] direction and control." MCLM has, in earlier pleadings in other matters, stated its position on Calabrese's (now Havens') false allegations and it is not necessary to recite them here. Calabrese is a disgruntled former employee of CRF, not of MCLM. Calabrese was apparently directed by Havens to prepare a declaration, which appears to be a hasty draft, and is full of lies and wild claims. Havens clings to these falsehoods as his own, and he does so under penalty of perjury.

Minor Issues

MCLM has operated stations lawfully by providing Private Mobile Radio Service. Rule Section 80.475(c) expressly permits the provision of either Commercial Mobile Radio Service (CMRS) or Private Mobile Radio Service (PMRS) by an AMTS licensee. The Commission's rules do not make operation under rule section 80.475(c) contingent on the

filing of a certification under 47 C.F.R. §20.9(b). Nor do the Commission's rules define operation providing PMRS as discontinuance of operation. Obviously, a licensee cannot provide PMRS without operating.

There is no merit to Havens' claim that "John Reardon cannot sign and submit the Application since under FCC rules only and officer of a [sic] LLC, which is an unincorporated association . . . can sign and submit a license application." Havens presented no authority in support of his assertion that a limited liability company is an unincorporated association. Section 1.917(a) of the Commission's Rules, provides that an application must be signed

(1) by the applicant if the applicant is an individual; (2) by one of the partners if the applicant is a partnership; (3) by an officer, director, or duly authorized employee, if the applicant is a corporation; (4) by a member who is an officer, if the applicant is an unincorporated association; or (5) by a trustee of the applicant if the applicant is an amateur radio service club,

47 C.F.R. §1.917(a). Rule 1.917(a) does not provide for anyone to sign an application for a limited liability company. Either Rule 1.917(a) does not permit a limited liability company (including Havens' LLCs) to file any license application or the Rule requires a reasonable interpretation. No Commission precedent answers the question of whether a limited liability company should be treated as a corporation or as an unincorporated association for purposes of applying Rule 1.917(a). An informal club, such a motorcycle club, a hiking club, or a labor union are good examples of unincorporated associations. Members may come and go with little or no formality and such associations do not require registration with a governmental entity to pursue their activities. A motorcycle club, a hiking club, or a labor union may have need of a radio license to coordinate its activities safely. In contrast, a limited liability

company is subject to state registration requirements and state regulation of its form and manner of operation. Codified state law defines the extent to which participants in a limited liability company are liable for harm caused by the company. Accordingly, a limited liability company is more like a corporation for purposes of applying rule 1.917(a) than it is like an unincorporated association. John Reardon signed the application in the instant matter as an authorized employee of MCLM and the Commission should accept his signature as sufficient for acceptance and grant of the application.

Havens is in error in claiming that there is “a dispute as to the control in MCLM,” Petition at 3. There is no dispute, no power struggle. Havens presented no evidence that anyone in MCLM disputes that Sandra DePriest controls MCLM.

MCLM notes Havens’ statement at Petition page 6 that “as far as the Commission’s rules allow reference and incorporation, then it is permitted in the instant proceeding.” However, Havens failed to disclose that in an e-mail message, see, Exhibit 10 hereto, to him on March 11, 2011, Roger Noel, Chief, Mobility Division of the Wireless Telecommunications Bureau, advised Havens that

the Division believes that the relief you seek is inconsistent with Sections 1.41 and 1.939 of the Commission’s rules. Nothing in Sections 1.41 or 1.939 permits incorporation by reference in informal requests or petitions to deny. In contrast, Sections 1.923 and 1.925 expressly do permit incorporation by reference in applications and waiver requests. Consequently, we read Sections 1.41 and 1.939 as not permitting incorporation by reference.

MCLM agrees with Mr. Noel that the Commission’s rules do not permit incorporation and believes that the Commission will disregard the pleadings which Havens attempted to

incorporate at pages 8-11 of his petition. See, also, the Commission's discussion of Rule Section 1.923 at Regionet Wireless License, LLC, 17 FCC Rcd. 21263, -67 (2002) (Havens petitioner). If the Commission does permit such incorporation, then MCLM respectfully refers the Commission to its responses to the Havens pleadings which Havens referenced.

Even if the Commission's Rules did permit incorporation by reference, they surely would not permit the kind of reference which Havens attempted at his page 11. At his page 11, Havens claimed to be withholding additional facts and information from both MCLM and the Commission but incorporated his secret facts by reference, anyway. Not only is such withholding one element of a strike pleading, but permitting such Star Chamber incorporation would give MCLM no opportunity to respond.

At his page 36, Havens confused termination of a license with revocation of a license. Havens is wrong. The Commission has never revoked an MCLM license.

Havens attempted to go back more than 15 years to impose a requirement on MCLM which has never existed. At page 42 of his Petition, Havens claimed that MCLM had not shown need for all of the channels of station WRV374. The Commission's Rules do not now and never have required a showing of need for grant of any certain amount of spectrum.

MCLM is Within Its Rights to Lease and Sell Spectrum

Havens pointlessly observed that “MCLM has its entire AMTS spectrum listed for sale,” Petition at 34. MCLM is actively listing its spectrum. The Commission may take administrative notice that Havens, too, has sold portions of his AMTS spectrum to the same types of users MCLM, including Northeast Utilities Service Company and Puget Sound Energy. Prior to deciding to lease and sell spectrum pursuant to the Commission’s Secondary Markets proceeding and rules, see, Regionet Wireless License, LLC, 17 FCC Rcd 6685 (2002), MCLM hired three business development consultants in 2006-2008, conducted extensive engineering and market research, and considered a range of possible uses for its spectrum, including innovative services which no one is offering today.

Among the possible uses MCLM examined for its AMTS spectrum were local distribution of the baseband content of broadcast satellite radio programs for XM Satellite Radio, one of the satellite radio broadcasters. Satellite signals do not provide the uninterrupted reception in all locations which is necessary for radio listener satisfaction. MCLM’s consultants considered whether translation of the satellite signals to the AMTS band, with its reliable, wide area terrestrial coverage, could be provided to satellite broadcasters and their subscribers to allow the broadcasters to reduce the risk to other services of their using terrestrial satellite-band repeaters. Unfortunately, after MCLM met with XM officials, XM’s need for MCLM’s spectrum was obviated by the subsequent purchase of XM by Sirius Satellite Radio.

MCLM explored providing connectivity to digital billboards. Digital billboards can provide advertisers like McDonald's with the ability to advise customers of special offers without the cost of the labor necessary to go out and change a sign's message. Digital billboards provide public safety entities with the ability to broadcast amber alerts, to warn travelers of dangerous road conditions and threatening weather, of obstructions and delays ahead, and of forthcoming improvement projects. MCLM looked at all these possibilities of providing wireless data service for digital billboards and held meetings with top billboard operators, including Lamar Outdoor Advertising, Clear Channel, and CBS. Unfortunately, MCLM determined that it could not compete with Cellular data service, notably Sprint, on price for connectivity to and from the digital billboard.

MCLM examined container tracking systems, whereby AMTS spectrum would be used for the last mile connectivity needed to monitor cargo as it enters the United States and is trans-shipped by rail, truck, and riverway. This container tracking is a critical mission of the Department of Homeland Security in the wake of the 9/11 attacks. Shippers of goods by sea, by river, by road, and by rail all desire improved tracking of their property as it is in transit. Knowledge of the location of a ship, a river tow, a road trailer, or a rail car or container can give a shipper the confidence and the information it needs to plan for the goods' arrival. Knowledge of a series of locations can allow a computer to estimate the time of arrival within a range of only minutes so that a cargo handling crew can be on hand with little or no wasted waiting time. MCLM's experts' analysis of the potential for a large container tracking system at ports of entry and nationwide concluded that the cost of deployment was large, and, despite

its best efforts, MCLM was unable to attract the necessary DHS funding or private investment needed to get such a container tracking system off the ground in the AMTS band.

Then, MCLM considered upgrading the Automatic Identification System (known as AIS-B) by using its AMTS spectrum in association with Shine Metro, a patent holder of AIS-B technology. MCLM met with maritime authorities, the United States Coast Guard, and hired a consultant with USCG experience to assist MCLM's management in developing this opportunity. After nearly a year of work, MCLM concluded that, while an opportunity existed, MCLM's spectrum would not be suitable because it is not allocated for international AIS, so ships would need two radio systems when coming from a different nation, even from Canada or Mexico.

MCLM also examined a type of LoJack for property, such as laptop computers. The necessary size of a tracking radio package in the band 217-220 MHz made it likely that few customers would desire to attach the package to a valuable item, such as their computers or flatscreen televisions.

MCLM entered into a memorandum of understanding with Project LifeSaver, a Virginia based non-profit organization that works in 44 states to track missing individuals. This was a venture which MCLM believed to be most worthy of its time and effort, since Project LifeSaver works in the 215 MHz band. Moving to the 217-220 MHz AMTS band would free Project LifeSaver from interference and would reduce the risk of interference to

TV stations on Channel 13. However, after months of efforts and meetings, MCLM cancelled the memorandum of understanding with Project LifeSaver, based on the fact that in the recession of 2008, insufficient funds, both private and governmental, were available for systemwide transition from the 215 MHz band to the 217-220 MHz band.

MCLM has encouraged manufacturers to develop new digital products for the AMTS band, products which will create new customers for MCLM. MCLM met with General Electric and with CalAmp and helped to persuade them to build Smart Grid products in the AMTS band, including GE's MDS SD2 series of radios and CalAmp's Viper 200 series, to make the best use of the \$4 billion which the Federal government has granted to utilities for Smart Grid deployment. MCLM continues to seek out new ideas for digital devices which can create new AMTS customers.

MCLM's initial marketing efforts led it to conclude at an early date, and MCLM's consultants concurred, that Cellular and Satellite service had consumed the market for traditional two-way maritime radio beyond the customers which it had acquired from Mobex and that it did not have sufficient bandwidth to offer other services to maritime users, such as video, which might be successful in the marketplace on a competitive basis. After this exhaustive three year long examination of potential uses for the spectrum, MCLM determined in September 2008 that Spectrum Bridge, an Ebay type of broker of spectrum online, would assist MCLM in identifying customers for sale or lease of the spectrum. Working together, Spectrum Bridge and MCLM identified Positive Train Control, Smart Grid control of electric

power distribution, and industrial radio users with narrowbanding requirements as the best users for its spectrum. MCLM notes that neither railroads, utilities, nor energy companies want MCLM to build and operate systems for them. Instead, these critical infrastructure industries desire to own their own exclusive spectrum, desire to design and control their own systems, and to build out as necessary to meet their public service needs. Thus, MCLM's client list today includes the Metrorail passenger railroad in the six counties of Southern California; the New Jersey Transit Authority (through Pinnacle Wireless); and large utilities like Puget Sound Energy; Alliant Energy (Wisconsin Power and Light and Interstate Power and Light), Duquesne Light; and smaller utilities like CoServ (Denton County Electric) near Dallas, and DEMCO (Dixie Electric Cooperative) near New Orleans. Pipeline companies like Enbridge and well head operators like EnCana Oil and Gas are all customers. MCLM proudly and respectfully submits that its research and deployment work has done far, far more to advance the cause of efficient use of the AMTS spectrum than Warren Havens' Berkeley Coffee Club, where he sits around with some professors coming up with new acronyms such as Halo and ATLIS, but creates nothing in reality except attorneys' fees and reams of paper.

MCLM is an Innovator

MCLM has four important new uses for the spectrum of station WRV374, including Radio over IP, PTC, Smart Grid, and narrowbanding, all of which meet public interest goals of providing safety of life, security of property, interoperability, and efficient use of spectrum.

In 2006, MCLM purchased a majority interest in Critical RF, Inc., which makes equipment and software for “Radio over IP.” CRF equipment provides interconnection between the Internet and radio systems so that, for example, a CRF application on a smartphone can be used to communicate through a CRF base station with an AMTS PassPort mobile unit. CRF uses MCLM channels in Florida; Indiana; Washington, D.C.; New York; and elsewhere to demonstrate Radio over IP to potential customers. CRF has a network of dealers around the nation in MCLM’s licensed cities, including the WRV374 markets such as Tampa/Clearwater, Orlando, and Miami/West Palm Beach. A copy of the CRF product brochure is attached hereto as Exhibit 12.

MCLM recognizes that the use of its WRV374 spectrum with interoperability to smartphones, software defined radios, and traditional radios with Radio over IP technology are part of the next evolution in communications. Just as WiFi has changed our notions of connectivity, so will cognitive radio and interoperable software make licensed spectrum one of many choices for users of two way radios, smartphones, and other devices with internet access built into them. MCLM has been, is, and intends to continue to be a leader in developing this new technology since its acquisition of CRF in 2006.

When Congress passed the Railroad Security and Infrastructure Act in October 2008, it mandated Positive Train Control over 130,000 miles of track but gave no funds or spectrum for the purpose. The major freight railways already owned some 220-222 MHz spectrum which--unlike Havens who did not construct anything before his 220 MHz licenses expired--